

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ELIZABETH NELSON,

Plaintiff,

Civil Action No. 2:22-cv-10918

Hon. Matthew F. Leitman

Mag. Anthony P. Patti

vs.

SERVICE TOWING INC., et al,  
Defendants.

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ELIZABETH NELSON

Plaintiff, In Pro Se

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MI DEPT. OF ATTORNEY GENERAL

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**DEFENDANTS CURTIS GAUSS, MARY MICHAEL, WILLIAM REICHLING, AND WILLIAM DWYER’S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6) (ECF 38)**

Defendants Curtis Gauss, Mary Michaels, William Reichling, and William Dwyer (“Defendants”), by and through their attorneys, Berry Moorman P.C., for their Reply Brief in Support of their Second Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) state as follows:

**I. Introduction**

This Reply addresses Plaintiffs’ Response (**ECF 46**) to Defendants’ Second Motion to Dismiss (**ECF 38**) which was filed in lieu of an answer to Plaintiffs’ Third Amended Complaint. (**ECF 28**).

**II. Discussion**

**a. Defendants incorporate by reference the arguments presented in ECF 41 - their Reply Brief in support of their first Motion to Dismiss.**

For the sake of economy, Defendants do not repeat the arguments contained in **ECF 41** because Plaintiff’s initial Response (**ECF 39**), to which ECF 41 replies, is largely the same as Plaintiff’s present Response (**ECF 46**). Briefly, Defendants’ note that Plaintiff’s Responses (**ECF 39 and 46**) have not refuted the arguments in Defendants’ Motions to Dismiss. Plaintiff’s Responses simply plead additional facts; cite unrelated litigation involving the City of Warren; and recite statistics about

COVID-19. This type of Response is inadequate to defeat Defendants' Motion to Dismiss.

**b. Plaintiff's Response is partially illegible and otherwise indecipherable.**

Not only have Plaintiff's filings been difficult to decipher because of the style and content, but portions of Plaintiff's Response are partially illegible. **Page ID 672 – 674.** Throughout the rest of Plaintiff's Response, various portions of pages are also illegible (**e.g., Page ID 677 and 690**). Some of the exhibits attached to Plaintiff's Response are similarly illegible. *See e.g., Ex. 8, 9, 23, 30.* In this context, Defendants note that "illegible" means the Response is physically unreadable. These unreadable portions cannot be taken to present any legitimate response to Defendants' Motion, even given Plaintiff's pro se status especially given this Court's warning to Plaintiff to comply with the Court's Local Rules. **ECF 45.**

The illegible nature of Plaintiff's Response is similar to Plaintiff's otherwise, generally indecipherable and confusing Third Amended Complaint to which Defendants filed their Motion to Dismiss. Even though Plaintiff is a pro se litigant, it is not the responsibility of the Court to "guess at the nature of the claim asserted." *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989). Likewise, this Court has dismissed pro se Plaintiff's claims where a response to a motion to dismiss, like the complaint, is nonsensical and incomprehensible. *See Hossein v. City of Dearborn Heights*, 2013 U.S. Dist. LEXIS 129066 at \*6 (E.D. Mich, Hluchaniuk, J).

### **III. Conclusion**

Defendants have spent significant time attempting to decipher, respond to, and create meaning from Plaintiff's pleadings and motion responses. However, even despite Plaintiff's pro se status, Defendants maintain their position that Plaintiff's pleadings are deficient pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff's Response has done nothing to refute Defendants' position. As such, the claims against the Defendants Curtis Gauss, Mary Michaels, William Reichling, and William Dwyer should be dismissed with prejudice.

Respectfully submitted,

BERRY MOORMAN P.C.

By: /s/ Rachel C. Selina

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Dated: November 28, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that on November 28, 2022, I electronically filed Defendants' Reply Brief in Support of Motion to Dismiss with the Clerk of the Court using the ECF system, which will send notification of such filing to all attorneys of record registered for electronic filing. I further certify that on November 28, 2022, I also sent the foregoing document via First-Class Mail to Elizabeth Nelson, P.O. Box 1422, Warren, MI 48090.

/s/ Cynthia Lang  
Cynthia Lang